

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COLONEL ROBERT FRANK, et al.,

Plaintiffs,

vs.

CITY OF HENDERSON, et al.,

Defendants.

Case No. 2:12-cv-01988-GMN-NJK

ORDER STAYING DISCOVERY
(Docket No. 29)

Pending before the Court is Plaintiffs' motion to stay discovery pending resolution of Defendants' motion to dismiss or for summary judgment. *See* Docket 29; *see also* Docket No. 10 ("motion to dismiss"). Defendants do not oppose the motion to stay discovery. *See* Potter Aff. ¶ 7. For good cause shown and for the reasons discussed below, the Court hereby **GRANTS** the motion to stay discovery pending resolution of the motion to dismiss.

"The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The case law in this District makes clear that requests to stay all discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken a "preliminary peek" at the merits of the potentially dispositive motion and is convinced that the plaintiff will be unable to state a claim for relief. *Id.* at 602-603.

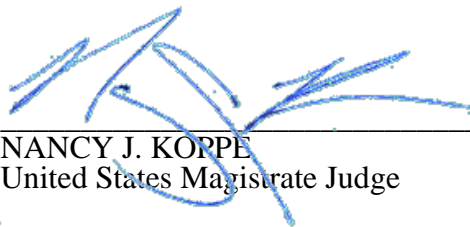
The Court finds these factors are present here. First, the motion to dismiss is potentially case-dispositive as it challenges all pending claims. Second, the motion to dismiss can be decided

1 without additional discovery. Third, the Court has taken a preliminary peek at the merits of the
2 motion to dismiss and believes Plaintiffs will be unable to state a claim for relief.¹

3 Accordingly, the motion to stay all discovery is hereby **GRANTED**. In the event that the
4 motion to dismiss is not granted in full, the parties shall submit a joint status report to the
5 undersigned within 14 days of the issuance of the order resolving the motion to dismiss. That status
6 report shall indicate what discovery needs to be completed and shall provide a proposed plan for
7 completing it.

8 IT IS SO ORDERED.

9 DATED: May 9, 2013

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12 NANCY J. KOPPE
13 United States Magistrate Judge
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26 ¹ Conducting this preliminary peek puts the undersigned in an awkward position because the
27 assigned district judge who will decide the motion to dismiss may have a different view of its merits.
28 *See Tradebay*, 278 F.R.D. at 603. The undersigned's "preliminary peek" at the merits of that motion is
not intended to prejudice its outcome. *See id.*